

IN THE HIGH COURT OF JUDICATURE AT PATNA

CR. WJC No.170 of 1999

1. RATAN RAI @ RAM RATAN RAI
 2. Sheo Lochan Rai @ Ram Lochan Rai
 3. Taleber Rai @ Ram Taleber Rai
All sons of Bujhawan Rai
 4. Jagdish Rai,
 5. Ram Ashish Rai
 6. Chandeshwar Rai
 7. Shankar Rai @ Shankar Prasad Yadag
 8. Chandrashekhar Rai
 9. Nagendra Rai
All sons of Ratan Rai @ Ram Ratan Rai
 10. Dayalu Rai son of Sheo Lochan Rai
 11. Raj Kishore Rai
 12. Ram Pavitar Rai
Both sons of Taleber Rai
All residents of village- Pipra Bishunpur, P.S. / Anchal
Parihar, District Sitamarhi. Petitioners.
- Versus
1. THE STATE OF BIHAR
 2. Kameshwar Thakur Son of Ram Narain Thakur, resident
of village- Pipra Bishunpur, P.S./ Anchal Parihar, District
Sitamarhi. Respondents.

8/

04.11.2010

Heard learned counsel for the petitioner and the State as
well as counsel for respondent no.2.

In the instant writ application, the petitioners have prayed
for quashing the entire criminal proceeding including the order dated
29.04.2007 passed in Case no. CI-9 of 1997 by Sub-Divisional
Judicial Magistrate, Sitamarhi (East) whereby process have been
issued against the petitioners for the offence under Sections 147,
148, 323, 342, 379, 447 and 504 of the Indian Penal Code.

There are altogether 12 petitioners in this case. Petitioner
nos. 1, 2 and 3 are full brothers. Petitioner nos. 4 to 9 are sons of
petitioner no.1. Petitioner no. 10 is son of petitioner no.2 and
petitioner nos. 11 and 12 are sons of petitioner no.3.

All the petitioners are residents of Village Pipra

Bishunpur, P.S./Anchal Parihar, District- Sitamarhi.

The prosecution case as made out in the complaint filed by the complainant Kameshwar Thakur in short is as follows:

The complainant alleged in the complaint petition that all the accused persons variously armed with Garasa, country made pistol and gun, forcibly began to cut Bamboo clamp from his land belonging to R.S.P. No. 2174/2395 of village Pipra Bishunpur. The complainant further alleged that when he protested to the same, the accused persons assaulted him with fists, legs and lathi. The accused persons also snatched wrist watch worth Rs.350/- and cash of Rs. 250/-. The accused persons also took away Bamboo clamp worth Rs.25,000/-.

Mr. Ashok Jang Bahadur, learned counsel for the petitioners submits that the land belongs to them and as such no case under Section 379 of the Indian Penal Code would be made out, as they cut the Bamboo clamp from their own land. He further submits that the allegation of assault by fists, legs and lathi is equally false. In support of his submission that the land belong to them, learned counsel has annexed the relevant Parcha from which it appears that 0.04 acres of land of khata no. 282, plot no. 2174/2395 is recorded in favour of the petitioners. He further submits that in respect of the land in question, the prosecution side filed Title Suit, which they lost up to the High Court. The Second appeal filed by the prosecution side bearing S.A. No.636 of 1991 was dismissed on 03.03.1997. The prosecution side in order to wreak vengeance just after seven days (on 10.03.1997) filed the instant complaint petition. He further

submits that no counter-affidavit has been filed on behalf of the complainant to controvert the submission of the petitioners.

Mr. Ajay Kumar Thakur, learned counsel appearing for the respondent no.2 submits that the complainant and witnesses in enquiry under Section 202 Cr.P.C. has supported the prosecution case. He further submits that Annexure-1 would relate to only 0.04 acres of land of plot no. 2174/2395. He further submits that no document has been filed to show that the prosecution side has lost the case regarding this particular piece of land up to the High Court. He further submits that in criminal prosecution, the case is to be decided on the basis of the evidence that may be produced in course of proceeding.

Learned counsel for the petitioner has relied upon decision reported in case of State of Haryana & Others Vs. Bhajan Lal & Others, reported in A.I.R. 1992 SC 604.

It appears that both sides are making claim on the land in question from which Bamboo clamp were cut. If a person harvests crops or cuts Bamboo clamps from the land in question on the basis of some semblance of colour of title, then in such circumstances, no case under Section 379 of the Indian Penal Code would be made out.

It further appears that the prosecution side has lost Second appeal against the petitioners up to the High Court and just after seven days, the instant complaint has been filed.

As such, I find order taking cognizance under Sections 379 of the Indian Penal Code bad in law and the same is quashed. So far as cognizance under Sections 147, 148, 323, 342, 447 and 504 of

the Indian Penal Code is concerned, it appears that though the petitioners were alleged to be armed with deadly weapons, they did not assault the prosecution side with it. The allegation in the complaint is that instead they assaulted the complainant with fists, legs and lathi. The punishment for the offences, for which cognizance has been taken is two years at the maximum.

In view of the above and also in view of the fact that more than 13 years have elapsed, I hold that continuance of proceeding under such trifle offences would be an abuse of process of law.

In the result, this application is allowed and the criminal prosecution arising out of Complaint case no. CI-9 of 1997 is quashed. However, the quashing of the complaint case will not come in the way of respondent no.2 in agitating his grievance before the appropriate forum in accordance with law.

(Samarendra Pratap Singh, J.)

Uday/

